IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 679 OF 1990

The State of Maharashtra. ... Appellant

Versus.

Shri Laxman Dharma Chimane. ... Respondent.

Shri K.K.Tated, A.G.P. for the Appellant.

Shri N.V.Walawalkar, Senior Counsel for the Respondent.

CORAM : ABHAY S.OKA, J.

DATED : 3rd April, 2006.

ORAL JUDGMENT.

1. Heard the learned Advocates appearing for the parties. The Appellant-State of Maharashtra has taken exception to the Judgment and Award dated 8th September 1989 passed by the learned Civil Judge, Senior Division, Raigad at Alibag. The impugned Judgment and Award has been passed in a reference made at the instance of the Respondent-original Claimant under section 18 of the Land Acquisition Act, 1894 (hereinafter referred to as "the said Act"). The acquisition is in respect of land situated at village Kamothe, Taluka Panvel, District Raigad. The land was notified for acquisition by a notification under section 4 of the said Act issued on

3rd February 1970 for the purpose of New Bombay Project. The Award under section 11 of the said Act was made on 20th August 1986. The compensation offered by the Award was at the rate of Rs.2/- per sq.meter. By the impugned Judgment and Award, the Reference Court has awarded market value at the rate of Rs.12/- per sq.meter together with all statutory benefits. The Respondent-original Claimant has filed cross-objection praying for enhancement of market value to Rs.20/- per sq.meter.

2. Shri Tated, the learned A.G.P. appearing for the Appellant submitted that considering the location of the acquired land, the market value awarded by the Reference Court is on the higher side. He submitted that as on the date of section 4 notification the land was undeveloped, a deduction ought to have been made on account of development charges. The learned A.G.P. invited my attention to the Judgment of the Division Bench of this Court delivered on 25/26th February 1993 in First Appeal No.754 of 1986 (Nama Padu Hudar & others v/s. The State of Maharashtra) and other connected Appeals. He submitted that so far as the market rate is concerned, the said decision of the Division Bench is operating in the field as the same has attained finality. The learned Counsel for the Respondent submitted that in view of the decision of the Division

Bench in the case of Nama Padu Hudar (supra) the cross objection deserves to be allowed.

3. I have considered the submissions. A perusal of the said decision of the Division Bench in First Appeal No.754 of 1986 in the case of Nama Padu Hudar (supra) shows that this Court has dealt with a number of appeals arising out of the Judgments and Awards made in Reference proceedings under section 18 of the said Act. The Judgments and Awards relate to the lands acquired from the villages Panvel and Kamothe in Taluka Panvel, District Raigad. The acquisition of the lands which were the subject matter of the said Appeals was also for the purpose of New Bombay project. The lands subject of the Appeals were also notified under section 4 of the said Act on 3rd February 1970. This Court after considering the entire evidence on record as regards location of the acquired lands divided the same into five groups on the basis of the distance of the acquired land from the Highway and from the Z.P.Road. Category IVA is of lands which are at a distance of 800 to 2200 meters from Bombay-Pune Highway and for the said land rate is fixed at Rs.20/- per sq.meter.

4. In the present case evidence led by the Respondent-Claimant shows that the land is located at a distance of one kilometer from the Highway. He has

deposed that the land was a levelled land. In my view the decision of the Division Bench of this Court will squarely apply to the present case as the land is situated at a distance of 1000 meters from the Highway which will fall under Category IVA fixed by the said decision and thus Claimant is entitled to the market value of Rs.20/- per sq.meter. The Division Bench has considered all the aspects including the fact that the acquired lands were agricultural lands. The market value of the acquired land will have to be fixed at Rs.20/- per sq.meter.

5. In view of this position, the Appeal will have to be dismissed and the Cross Objection will have to be allowed. Hence the following order is passed:

i) The impugned Judgment and Award dated 8th September 1989 is modified. It is held that the Respondent is entitled to market value of the acquired land at the rate of Rs.20/- per sq.meter. In addition to the market value, the Respondent-Claimant will be entitled to the statutory benefits under section 23(1A), section 23(2) and section 28 of the Land Acquisition Act, 1894 as amended by Act No.68 of 1984.

ii) The Respondent-Claimant will be entitled to the proportionate costs throughout.

iii) The Reference Court will make a fresh Award in terms of this order within a period of four months from the date of receipt of this order.

iv) Certified copy expedited.

Judge.